IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19/12/2003

Coram

The Hon'ble Mr. Justice P. SATHASIVAM

Writ Petition No. 35985 of 2003
and
W.P.M.P.Nos. 43697 and 43698 of 2003

Shanmugaraj. .. Petitioner.

-Vs-

1. The Deputy Superintendent of
Police, Tenkasi, Tirunelveli District.

2. The Inspector of Police,
Kadayanallur, Tenkasi Taluk,
Tirunelveli District. .. Respondents.

Petition filed under Article 226 of the Constitution of India, for
issuance of a Writ of Certiorarified Mandamus, as stated therein.

For petitioner: Mr. K. Chandru, Senior
counsel for Mr. P.V. Bakthavatchalam.

For respondents: Mr. V. Reghupathy, Govt., Pleader.

:ORDER

One Shanmugaraj, West District Secretary of Puthiya Thamizhagam Political party, aggrieved by order of the Deputy Superintendent of Police, Thenkasi/first respondent herein dated 6-12-2003, rejecting his request for holding an all party Hunger Strike under the presidentship of Puthiya Thamizhagam Founder President Thiru K. Krishnasamy on 10-12-2003 to protest against construction of wall across Karuppanathi River after 1 = k.m. from the Karuppanathi Dam to a height of 4 feet and length across 155 feet near Kadayanallur, has filed the above writ petition to quash the same and direct the respondents to grant permission to the petitioner to hold an all party Hunger Strike in Quaid-e-Millath Thidal, Kadayanallur, Tirunelveli District.

2. According to the petitioner, he is a District Secretary of
Tirunelveli West District of Puthiya Thamizhagam political party.

Karuppanathi Dam comes within the jurisdiction of Kadayanallur Municipality and the water benefits about 72 tanks, more than 100 villages, comprising about 9500 acres of agricultural lands apart from the population of over one lakh including the Kadayanallur Town. While so, during October, 2003, a wall for a length of 155 feet and height of 4 feet has been constructed across the Karuppanathi Periaru River on a concrete foundation 5 feet thick after 1 = k.m.s from the Dam with a view to stagnate the water for the benefit of a few land owners adjacent to the said area on both sides of the river. The construction of the wall is arbitrary and illegal. The entire people of the said area irrespective of political or other affiliation have protested against the said wall continuously. His political party have been actively involved in all the protests so far. After mutual consultations among all political parties and organisations except the ruling party it was decided to hold an hunger strike in Kadayanallur Town under the presidentship of Dr. K. Krishnasamy who is the president of Puthiya Thamizhagam political party and a former Member of Legislative Assembly. The petitioner made an application dated 25-11-2003 to the second respondent seeking for permission to hold the hunger strike at the Quaid-e-Millath Thidal in Kadayanallur. The first respondent, by the impugned order dated 6-12-2003, rejected the permission sought for on flimsy and non-existent reasons without affording any opportunity to him; hence the present writ petition.

3. Considering the urgency and the issue raised, this Court directed the Government Pleader to get instructions. Pursuant to the same, learned Government Pleader secured necessary instructions.

4. Heard Mr. K. Chandru, learned senior counsel for the petitioner and Mr. V. Raghupathy, learned Government Pleader for the respondents.

5. (i) Mr. K. Chandru, learned senior counsel for the petitioner, after taking me through the application of the petitioner and the impugned rejection order of the first respondent, would contend that the impugned order is arbitrary and against the principles of natural justice as well as violative of Articles 14, 19 (1)(b) and 21 of the Constitution of India. He further contended that since the Hunger Strike sought for is to be held in a peaceful manner within the "Thidal" area only, and that even recently i.e., during October, 2003, political parties were granted permission to hold public meetings and other demonstrations in Quaid-e-Millath Thidal; hence the present order rejecting the request of the petitioner is discriminatory and not maintainable. According to him, the respondents cannot restrain peaceful and democratic agitation for public cause. He also states that petitioner undertakes that the hunger strike for one day will be peaceful and will not cause any disturbance to any section of the society in any manner whatsoever.

(ii) On the other hand, Mr.V. Raghupathy, learned Government Pleader, on instructions would contend that in the light of the antecedents of the petitioner and his leader-Dr. K. Krishnasamy, if permission is granted, there is likelihood of communal clash between two groups and in the interest of peace, public safety and law and order problem, the first respondent is fully justified in rejecting the request of the petitioner; accordingly prayed for dismissal of the writ petition.

6. I have carefully considered the rival submissions.

7. It is seen from the application of the petitioner dated 25-11-2003 that in order to convey their protest against the construction of wall across Karuppa Nadhi after 1 = K.Ms from the Karuppanathi Dam, which, according to the petitioner, affects the interest of the local people sought permission to hold Hunger Strike for one day i.e., on 10-12-2003 under the Presidentship of Dr. K. Krishnasamy, Founder-President of Puthiya Thamizhagam political party at Quaid-e-Millath Thidal in Kadayanallur. While rejecting the request of the petitioner, in the impugned order dated 06-12-2003, the Deputy Superintendent of Police, Tenkasi/first respondent has assigned three reasons, namely:
i) The place chosen by the petitioner for hunger strike is nearer to National Highway and it would affect the traffic as well as general public on many aspects;
ii) There is a Mosque called Gnaniar Grand Mosque located near the "Thidal" and it would affect the religious sentiments of Muslim community;
iii) Inasmuch an all party meeting, including the political party of the petitioner had already been convened in respect of the same issue, namely, construction of wall across Karuppanadhi Dam, there is no need to observe hunger strike again at the instance of Puthiya Thamizhagam political party.

8. Let us consider whether all the three objections are tenable.
First I shall consider the second objection, namely, existence of Grand Mosque near the "Thidal" where permission is sought for to hold hunger strike. Mr. K. Chandru, learned senior counsel for the petitioner has brought to my notice that even as early as 25-1 1-2003, the President, Inamthar's committee Maghuthum Gnaniar Pallivasal, Kadayanallur intimated the petitioner that they have no objection in conducting hunger strike on 10-12-2003 between 9 a.m. and 5 p.m. in the "Thidal", provided that there will not be any obstruction to the persons who visit the Mosque. A copy of the said letter finds a place at page No.3 of the typed-set of papers filed along with the writ petition. In the light of the said letter, reason No.2 for rejecting the request of the petitioner cannot be sustained.

9. Coming to the first ground for rejection, namely, the place in which the petitioner sought for hunger strike lies near the National Highway and it would affect the traffic and general public. In the impugned order, though it was stated that the place is nearer to the National Highway, the actual/approximate distance between the "Thidal" and the National Highway has not been mentioned. The petitioner has stated in the affidavit that the Quaid-e-Millath Thidal is situated nearly 500 metres away from the National Highway and it is the usual place where public meetings and demonstrations are being held and it will in no way affect the free flow of traffic. Even according to the learned Government Pleader, as per his instruction, the distance is 100 metres i.e., roughly 300 feet away from the National Highway. It is relevant to note that the petitioner has explained that the permission sought for is only for hunger strike between 9 A.M. and 5 P.M. They assured that it would be held in a peaceful manner within the Thidal area only and there is no necessity for the persons participating in the hunger strike to spill into the street. In the light of the assertion that several meetings had been held at the instance of the political parties in the very same

Thildal, and the recent meeting was held in October, 2003, and taking note of the fact that permission sought for is to hold hunger strike only, that too, between 9 A.M. and 5 P.M. and also of the fact that even according to the police, it lies 100 metres away from the National Highway, I am satisfied that the first ground for rejection of the permission also cannot be sustained.

10. Coming to the third ground that since all political parties condemned the action in constructing a wall across the river on an earlier occasion, there is no need for the petitioner and his political party to observe hunger strike again for the very same cause, as rightly pointed out by the learned senior counsel for the petitioner, the issue to be decided is, whether the proposed hunger strike for one day is justifiable or not? and it is not for the respondents to go into the other aspects held previously. As rightly contended, if the proposed hunger strike is peaceful without disturbance to any one, there cannot be any objection in permitting the petitioner and his political party to observe hunger strike as claimed. I am of the view that the rejection on the ground that it is unnecessary to observe hunger strike is also not tenable.

11. Mr. V. Raghupathy, learned Government Pleader, by placing a report of Mr. R. Manickam, a retired District Judge about the incident that took place few years back and the confidential file maintained by Kadayanallur Police Station and also pointing out the antecedents of Dr. K. Krishnasamy, founder leader of Puthiya Thamizhagam political party, would contend that if permission is granted as claimed by the petitioner, it would lead to communal clash and there is a likelihood of law and order problem in Kadayanallur Town. I have perused all those materials. It is true that Dr. Krishnasamy, leader of the political party, is facing certain criminal cases. When the applicant and their party assure that the proposed hunger strike will be held in a peaceful manner, I am of the view that in a democratic country like us, permission cannot be rejected on that ground alone. In this regard, it is worth-while to refer a decision of R. Jayasimha Babu, J., in Nedumaran, P. v. State of Tamil Nadu and others, reported in 1999-1-L.W. (Crl.) 73. In that case it was submitted by the Government that intelligence report clearly shows that the primary object of the meeting was to rouse the feelings of the persons to voice support for this banned organisation, and having regard to the fact that there were many factors even amongst those who were supporting the banned organisation, there was likelihood of breach of public tranquillity and public safety, and that the apprehension of such breach was neither remote nor farfetched, but was very real and direct. Rejecting the said contention, the learned Judge held: (paras 15, 16 and 17)

"15. The rights conferred on the citizens by Article 19 of the Constitution are precious rights and are not to be lightly breached or restricted by the State or any functionary of the State. Any regulation of exercise of those rights must be for the purposes specified in Article 19 of the Constitution itself, and that power must be so exercised as to subserve the larger public good. The power to impose restrictions is not the power which is available for exercise in an arbitrary manner or for the purpose of promoting the interest of those in power, or for suppressing dissent. Democracy can be made dynamic and truly alive only when there is free market for ideas and

discussion and debate is not only permitted but is encouraged. All expression of opposing view point cannot be regarded as dangerous to the safety or security of the country and all expressions which do not find the approval of those exercising the power of the State cannot be regarded as harmful to the State and to the public order.

16. The power conferred on the Commissioner under Section 41 of the Madras City Police Act is sweeping, that power is meant to be exercised with great care and caution. The Madras City Police Act is a pre-Constitution enactment, and the powers conferred on the authorities at a time when the country was under the colonial regime, and during the period when suppression of dissent was considered to be a legitimate policy of the State, cannot be exercised after the enactment of the Constitution in the same manner, as it was exercised earlier. The Intelligence Report placed before the Court shows that the police still have the attitude which does not seem to recognise that the country is a democratic nation, where every citizen has a right to full and equal participation in the process of Government. No citizen can be regarded as an enemy of the State merely because he has voiced a view which is not the one favoured by those in authority.

17. The fact that the police are vested with power should not make them assume that, that power is available for exercise in any manner that they consider fit. That power is to be exercised strictly within the ambit of the provisions of the Constitution, more particularly, the requirement that any restriction placed on the exercise of fundamental rights should be a reasonable restriction, and the restrictions so placed should be shown to be essential, having regard to the permissible purpose for which restrictions may be imposed."

The said observation and conclusion of the learned Judge is also applicable to the facts of the case on hand.

12. Learned Government Pleader by drawing my attention to Section 41 of the Madras City Police Act, 1888 which is also applicable to other districts, submits that considering the preservation of the public peace or public safety, the first respondent is justified in rejecting the request of the petitioner. It is relevant to note that the Madras City Police Act, 1888 is a pre-Constitution enactment and as observed in the above decision, the powers conferred on the authorities at a time when the country was under the colonial regime, and during the period when suppression of dissent was considered to be a legitimate policy of the State, cannot be exercised after the enactment of the Constitution in the same manner, as it was exercised earlier. Even otherwise, as per sub-section (4) of Section 41 before passing an order refusing to grant permission, an opportunity must be afforded to the person who applied either in person or by pleader. In the case on hand, though the first respondent has rejected the request of the petitioner, he neither issued a show cause notice nor afforded to him a personal hearing as provided under sub-section (4) of Section 41.

13. Learned Government Pleader relying on an order of the Supreme Court in Civil Appeal No. 7926/2001 dated 10-04-2003, would contend that the

antecedents of the organiser is one of the relevant factors and in view of report by the police against Dr. K. Krishnasamy, it is not desirable to grant such permission. It is true that the appeal before the Supreme Court was preferred by K.K. Road Merchants Association, Tamil Nadu against the judgment of the Division Bench of this Court declining to grant such relief. While hearing the matter, Secretary to Government, Home Department, State of Tamil Nadu filed an affidavit conveying their stand. After recording the contents of the affidavit, the Hon'ble Supreme Court closed the appeal, holding no further orders are necessary. Firstly, the Hon'ble Supreme Court, in the light of the stand taken in the affidavit, closed the appeal. Secondly, even in the affidavit it is stated that blanket ban might cause complications and that a decision has to be taken in each case with reference to the nature and purpose of the meeting or procession, the antecedents of the organisers and whether there would be any prejudice in maintenance of law and order, public tranquility, peace and security of the State. There is no positive order stating that if the antecedents of the organiser is bad, there cannot be any meeting being organised by such person. It is true that Dr. Krishnasamy is facing certain criminal cases. So long as the procession or hunger strike is assured to be peaceful without harm and not against any individual or group or community, in the light of the Constitutional protection and mandate, there cannot be any blanket prohibition. As observed in 1991-1-L.W. (Crl.) 73 (cited supra), no citizen can be regarded as an enemy of the State merely because he has voiced a view which is not the one favoured by those in authority. Likewise, though police are vested with power, I am of the view that the power is to be exercised strictly within the ambit of the provisions of the Constitution, particularly the requirement that any restriction placed on the exercise of fundamental rights should be a reasonable restriction, and the restriction so placed should be shown to be essential, having regard to the permissible purpose for which restrictions may be imposed.

14. It is also useful to refer a recent order of the First Bench of our High Court dated 12-12-2003 rendered in Writ Petition No. 36209 of 2003 (Arcot N. Veerasamy Vs. The Government of Tamil Nadu, represented by its Home Secretary, Chennai-9). The said writ petition came to be filed by way of Public Interest Litigation at the instance of a political party of the State praying for issuance of a writ of mandamus forbearing the Government and the police officers from preventing the office bearers and cadres of their party for participation in the picketing in front of the State and Central Government offices and also from making any preventive arrests. While considering the said issue, Their Lordships have considered the right of a citizen to participate in a peaceful procession and the right of State/ police to impose restriction considering the peace and maintenance of law and order. The following observation of the Division Bench is relevant: (para 5)

"5. Dissent is the essence of the democracy and Clauses (a) and (b), read together, to sub-Article (i) of Article 19 of the Constitution, grant Fundamental Rights to citizens to assemble peaceably and without arms; and also of freedom of speech and expression. But they shall be subject to such reasonable restrictions as envisaged in sub Articles (2) and (3) of Article 19. Sub-Article (2) is not very much relevant for this case and what is

relevant is subArticle (3) under which the State is entitled to place such reasonable restrictions in the interest of public order. While the petitioner and his party are entitled to assemble peaceably and without arms, the police are entitled to place reasonable restrictions and in fact, such assembly can only be subject to permission, which can be granted under Section 41 of the Madras City Police Act, 1888..."

Ultimately the Division Bench permitted the petitioner therein for peaceful procession to express their views by slogan shouting but without indulging in any violence and subject to follow such regulatory methods, which the police formulate for the purpose of peaceful procession.

15. In the light of what is stated above, the impugned Memo of the first respondent dated 06-12-2003 rejecting the request of the petitioner to hold All Party Hunger Strike on 10-12-2003 is quashed, and the respondents are directed to grant permission to the petitioner to hold an All Party Hunger Strike in the Quaid-e-Millath Thidal at Kadayanallur, Tirunelveli District for one day between 20 th December and 31st December, 2003, subject to the following conditions:

i) The assembly for the Hunger Strike should be at a distance of at least 100 metres away from the National Highway;

ii) The Hunger Strike should be between 9 A.M and 5 P.M;

iii) The participants are permitted to address or raise slogans only with regard to the subject in question, namely, construction of wall across Karuppanadi river;

iv) No one is permitted to mention any individual's name or the name of any community or religion during the entire period of Hunger Strike.

If there is any violation of the conditions referred to above, the police will be free to take appropriate action according to Law. Writ Petition is allowed in the above terms. No costs. Consequently, connected writ miscellaneous petitions are closed.

R.B.

Index:- Yes
Internet:- Yes

To:

1. The Deputy Superintendent of
Police, Tenkasi, Tirunelveli District.

2. The Inspector of Police,
Kadayanallur, Tenkasi Taluk,
Tirunelveli District.